

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS BISIGNANO,
DARIN JEFFERS, MICHAEL O'TOOLE,
MICHAEL BOURGAL, FRANK H. FINKEL,
JOSEPH A. FERRARA, SR., MARC HERBST,
DENISE RICHARDSON, and THOMAS CORBETT,
as Trustees and Fiduciaries
of the Local 282 Welfare Trust Fund,
the Local 282 Pension Trust Fund, the
Local 282 Annuity Trust Fund, the Local 282
Job Training Trust Fund, and the Local 282
Vacation and Sick Leave Trust Fund,

Plaintiffs,

-against-

ADOPTION ORDER
19-CV-2077 (JS) (AYS)

NASTASI & ASSOCIATES, INC.,

Defendant.

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APPEARANCES

For Plaintiffs: Arthur Joseph Muller, Esq.
Christopher A. Smith, Esq.
Trivella & Forte LLP
1311 Mamaroneck Avenue, Suite 170
White Plains, New York 10605

For Defendant: No appearances.

SEYBERT, District Judge:

Plaintiffs Thomas Gesualdi, Louis Bisignano, Darin
Jeffers, Michael O'Toole, Michael Bourgal, Frank H. Finkel, Joseph
A. Ferrara, Sr., Marc Herbst, Denise Richardson, and Thomas
Corbett, as Trustees and Fiduciaries of the Local 282 Welfare Trust
Fund, the Local 282 Pension Trust Fund, the Local 282 Annuity Trust
Fund, the Local 282 Job Training Trust Fund, and the Local 282
Vacation and Sick Leave Trust Fund ("Plaintiffs"), commenced this

action against Nastasi & Associates, Inc. ("Defendant"), pursuant to Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1132 and 1145, as amended, and Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, to collect \$36,960.46 in unpaid contributions plus interest, costs, and liquidated damages. (See Compl., ECF No. 1.) On March 13, 2020, Plaintiffs filed a motion for default judgment against Defendant (see Mot., ECF No. 11), and on October 23, 2020, this Court referred the motion to Magistrate Judge Anne Y. Shields for a report and recommendation (see Oct. 23, 2020 Elec. Order).

On February 11, 2021, Judge Shields issued a Report and Recommendation ("R&R") recommending that the Court grant Plaintiffs' motion for default judgment and award Plaintiffs: (1) \$36,960.46 for estimated unpaid contributions; (2) \$96.57 for interest on late paid contributions; (3) \$28,161.49 for interest on estimated unpaid contributions; (4) \$28,161.49 for liquidated damages and \$1,506.51 for liquidated damages on late contributions; (5) additional interest on estimated unpaid contributions and liquidated damages to be calculated at a rate of \$18.22 per day from March 28, 2019 through the date of judgment herein; (6) \$10,166.00 for attorneys' fees; and (7) \$634.63 in other costs. (R&R, ECF No. 21, at 8.) Judge Shields recommended that this Court deny Plaintiffs' request for an order requiring Defendant to submit to an audit, reasoning that such an audit is

unnecessary, because Plaintiffs elected to perform an estimated audit of Defendant's books and records for the same time period, and the R&R recommends awarding estimated damages based on that audit. (Id. 7-8.) On March 4, 2021, Plaintiffs served the R&R on Defendant at its last known address. (Aff. Serv., ECF No. 22.)

The time to object has expired and no objections to the R&R have been filed. Upon careful review and consideration, the Court finds Judge Shields' R&R to be comprehensive, well-reasoned, and free of clear error. Accordingly, the Court ADOPTS the R&R in its entirety.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for a default judgment is GRANTED. Plaintiff is awarded:

- (1) \$36,960.46 for estimated unpaid contributions;
- (2) \$96.57 for interest on late paid contributions;
- (3) \$28,161.49 for interest on estimated unpaid contributions;
- (4) \$28,161.49 for liquidated damages and \$1,506.51 for liquidated damages on late contributions;
- (5) additional interest in the amount of \$26,455.44 (calculated at a rate of \$18.22 per day from March 28, 2019 through the date of judgment herein);
- (6) \$10,166.00 for attorneys' fees; and
- (7) \$634.63 in other costs.

The Clerk of the Court is respectfully directed to enter judgment accordingly and, thereafter, mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 24, 2021
Central Islip, New York